

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 SUMMARY ORDER

4 **THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL**
5 **REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS**
6 **OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS**
7 **OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A**
8 **RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL**
9 **OR RES JUDICATA.**

10 At a stated Term of the United States Court of Appeals for the Second Circuit, held at the
11 Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York,
12 on the 19th day of September, two thousand six.

13 Present: HON. THOMAS J. MESKILL,
14 HON. SONIA SOTOMAYOR,
15 HON. ROBERT A. KATZMANN,
16 *Circuit Judges.*
17

18
19 UNITED STATES OF AMERICA,

20 *Appellee,*

21
22 - v -

No. 06-0128-cr

23
24 HAFIZ KHAN, a/k/a HASIB KHAN,

25
26 *Defendant-Appellant.*
27

28 Appearing For Defendant-Appellant:

B. ALAN SEIDLER, New York, NY

29 Appearing For Appellee:

30 PABLO QUIÑONES, Assistant United
31 States Attorney (Marc Litt, Assistant United
32 States Attorney, *on the brief*), for Michael J.
33 Garcia, United States Attorney for the
Southern District of New York, New York,

1 NY

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3 Appeal from the United States District Court for the Southern District of New York
4 (Jones, J.).

5 **ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED,**
6 **AND DECREED** that the judgment of the district court be and hereby is **AFFIRMED**.

7 Defendant Hafiz Khan (“Khan”) pleaded guilty to one count of illegal reentry to the
8 United States. *See* 8 U.S.C. § 1326(a), (b)(2). He now appeals from a judgment entered by the
9 district court on December 23, 2005 sentencing him to, *inter alia*, 77 months’ incarceration. We
10 assume familiarity with the facts and procedural history of this case.

11 Khan claims no defect in the procedure by which he was sentenced and argues only that
12 his sentence, which was at the low end of the advisory Guidelines range properly calculated by
13 the district court, was substantively unreasonable.¹ While a sentence within the Guidelines range
14 is not immune from reasonableness review, “in the overwhelming majority of cases, a Guidelines
15 sentence will fall comfortably within the broad range of sentences that would be reasonable in
16 the particular circumstances.” *United States v. Fernandez*, 443 F.3d 19, 27 (2d Cir. 2006).

17 Here, Khan argues that it was unreasonable for the district court to give a Guidelines
18 sentence in light of: (1) several family members’ dependence upon him for financial and other

¹Below, Khan also argued for a departure under the Guidelines for the same reasons he now argues compel a non-Guidelines sentence. On appeal, he does not appear to claim that the district court erred in not granting a departure, and in any case such an argument would not be successful. *See United States v. Valdez*, 426 F.3d 178, 184 (2d Cir. 2005) (district court’s refusal to downwardly depart “is generally not appealable” unless the court “misapprehended the scope of its authority to depart or the sentence was otherwise illegal”).

1 support; and (2) his disability and history of alcohol abuse. However, the district court
2 reasonably determined that Khan's family circumstances were not unusual and that, in any event,
3 Khan was unlikely to be able to provide any support in the future in light of his expected
4 deportation following his incarceration. It also reasonably determined that Khan's medical
5 condition and efforts to curb his alcohol addiction were not "extraordinary," while asking that
6 Khan be assigned to a facility that could provide him appropriate care for both. After discussing
7 these considerations, the district court observed that Khan has committed six felonies, including
8 several involving violence. In light of Khan's criminal history and likelihood of further
9 recidivism, the district court found that protection of the public and the need to deter Khan from
10 committing further crimes "militate for a Guidelines sentence." Under these circumstance, we
11 cannot say that this conclusion was unreasonable.

12 Accordingly, the judgment of the district court is **AFFIRMED**.

13
14 FOR THE COURT:
15 ROSEANN B. MacKECHNIE, CLERK
16 By:

17 _____
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